

Zoning Board of Appeals Minutes 09/10/2014

MASHPEE ZONING BOARD OF APPEALS SEPTEMBER 10, 2014 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, September 10, 2014 at 6:00 p.m. in the Ockway Room at the Mashpee Town Hall, 16 Great Neck Road North. Board Members, William A. Blaisdell, Ronald Bonvie, Richard Jodka, Associate Members Domingo K. DeBarros and Scott Goldstein were present. Building Commissioner, Michael Mendoza was also present. Chairman, Jonathan Furbush and Board Member, James Reiffarth were absent.

Mr. Blaisdell, Vice Chairman opened the hearing at 6:00 p.m., and announced all Board Members that will be acting throughout.

Kimberly A. Landry: Requests a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension, or alteration of a pre-existing, non-conforming structure to allow for construction of an above ground pool on property located in an R-5 Zoning District at 44 Pequot Road, (Map 29 Parcel 99), Mashpee, MA. (Continued from July 23, 2014 Hearings, opened but not heard).

Ms. Landry represented herself and daughter requesting installation of an above ground pool on the side yard of her property. Ms. Landry stated she has rear and front setbacks of 25 feet and is requesting to place the pool at a 5 foot side yard setback because there is no room in the back yard. She supplied the Board with photographs that show a retaining wall in the backyard, and a 10 x 12 shed on the side yard. The shed is currently 3 to 4 feet from the lot line. Ms. Landry wants to move the shed and place the pool in that same area approximately 5 feet from the lot line.

Ms. Landry was concerned about relocating the shed and asked the Board if they had suggestions. Mr. Mendoza, Building Commissioner, stated when it's time to move the shed, to meet with him and discuss the permit.

Mr. Bonvie stated to Ms. Landry that she comply with the Building Commissioner's request when she relocates the shed. Moving the shed is irrelevant to the Board.

Mr. Blaisdell read a letter from an abutter into the record dated August 23, 2014. "The Landry's live in the house behind me at 44 Pequot. I have had the pleasure of knowing them since they purchased the home in 1998. Almost every time my family and I have come down to the Mashpee house over the years, the Landry's have made a point to stop by and say hello. They are wonderful neighbors. I have no objection if the Landry's wish to install an above-ground pool in their backyard. Hearing people, especially children, laughing and splashing would be happy noise to our family. Sincerely, Sara M. Alborghetti, Homeowner, 17 Hemlock Drive, Mashpee, MA."

Ms. Landry stated the pool is 18 feet in diameter and needs to place the pool 5 to 7 feet from the side yard property line because she needs to access the pool to clean it.

Mr. Bonvie made a motion to issue a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension, or alteration of a pre-existing, non-conforming structure to allow for construction of an above ground pool on property located in an R-5 Zoning District at 44 Pequot Road, (Map 29 Parcel 99), Mashpee, MA. (Continued from July 23, 2014 Hearings, opened but not heard).

Referencing a certified plot plan, Bayport Homes, scale: 1"= 30', date: 10/6/88, drafted by All Cape Survey Consultant, Rte. 28, Ste. 301, Summerfield Park, Mashpee, MA, stamped by Christopher Costa, Registered Land Surveyor, and depicts the pool will be located approximately 5 feet from both the rear and side yard lot line and also there is an existing shed that applicants stated is closer than 5 feet. The shed will be moved and the applicant will take direction from the Building Commissioner in reference to relocating the shed. Also making the motion, the Board finds the pool is not substantially more detrimental than the existing non-conforming structure. The new pool will be an improvement and conform to current building code requirements, is compatible in size and character to other structures in the neighborhood, and there is sufficient parking and setbacks as may be required.

Mr. Blaisdell, seconded, yes, Mr. Jodka, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Mashpee Commons, LP: Request minor modifications under Special Permit SP-86-04-024 to address actual built conditions, relocate

certain square footage of building space and location of parking areas, and previously approved residential units as permitted on property located in a C-1 Zoning District, at 38 Nathan Ellis Highway, Building 3, (Map 74 Parcel 20), Mashpee, MA. (Continued from August 27, 2014 Hearings).

Mr. Bonvie announced he will abstain from this petition.

Mr. Blaisdell stated that with Mr. Bonvie abstaining will leave only four board members sitting on the hearing. All applicants are entitled to have a five member board with a five member board four positive votes and one negative vote the petition would pass. With only four members, sitting on the board it would take a unanimous vote for the petition to pass, and will grant you a continuance if you desire.

Mr. Tom Feronti, representing Mashpee Commons, returned in front of the Board from the continued hearing on August 27, 2014 regarding Building 3 (Asia Restaurant). After the meeting, the following week he met on site with the Chairman, the Vice Chairman, of the ZBA, Building Commissioner, and members of the Mashpee Fire Department to address some of the concerns related to the civil design of the building. The civil engineer updated the civil plans which shows the location of the fire department connection and the gate.

A subsequent onsite meeting was held with Fire Inspector, Joel Clifford to discuss the sprinkler system, and decided to install a post indicator valve on the island located in the parking lot, so the fire department can control the sprinkler system from outside the building. Also, he will explore putting a hydrant at this location as well. The closest hydrant is located in front of Panera.

The other issue that was discussed was to determine if the changes were a major or minor modification. Mashpee Commons' Attorney, and Town Counsel had a discussion and Mr. Blaisdell stated he addressed this issue with Town Counsel who questioned if this hearing was public. It was advertised as a public hearing and therefore the opinion is the 250 square feet is diminimis compared to the 356,643 square feet of the total structures covered under Mashpee Commons Special Permit. If there is a request for the Board by Mashpee Commons to put the new enclosure on the building, it would require Mashpee Commons to reduce one of the other buildings 250 square feet.

Mr. Feronti stated there is a square footage table in the application and indicates the 250 square foot reduction of a future building. The 356,643 square feet is the parameter of the special permit and does not change. Although they added a little more to one building there's no increase to the 356,643 square feet, and remains constant.

Mr. Mendoza asked if they addressed the discussion about the light post and the handicapped parking. Mr. Feronti stated the light will be moved a little more to the west so that it maintains the clearance past the gate, and the same for the parking space. He is currently getting estimates from contractors. Mr. Feronti is hoping to get the application approved within a day and will incorporate the Phase 2 package with the building application.

Mr. Mendoza wanted to know if the egress and emergency lighting systems are installed. Mr. Feronti stated there is an exit sign above the door and the egress pathways will be illuminated.

Mr. Blaisdell read an email from the fire department dated September 8, 2014, "All, The issues that the Fire Department identified have been discussed with Tom Feronti (Mashpee Commons representative) and Bill Gallagher (Yankee Sprinkler Company). The resolution is to install a new fire hydrant and a new post-indicator valve for 3 Greene Street in the island directly across from 3 Greene Street.

The Fire Department Connection will be located on the building as discussed with a door to access the FDC in the perimeter fencing. As for the sprinkler protection on the outside of the building, that is under review with Bill and Yankees sprinkler Company's Fire Protection Engineer. Regards, Joel Clifford".

Mr. Blaisdell told Mr. Feronti that if he would have to submit another application if there's a plan to enclose the outdoor seating. Mr. Feronti stated there are no plans to enclose the outdoor seating. The plan is to use the overhang and install umbrellas.

Mr. Blaisdell stated he will make a motion to issue Mashpee Commons, LP, request for minor modifications under Special Permit SP-86-04-024 to address actual built conditions, relocate certain square footage of building space and location of parking areas, and previously approved residential units as permitted on property located in a C-1 Zoning District, at 38 Nathan Ellis Highway, Building 3, (Map 74 Parcel 20), Mashpee, MA. (Continued from August 27, 2014 Hearings).

Also this motion is conditioned upon Mashpee Commons moving the existing lamp post approximately 2 feet on North Street and also moving the existing handicapped sign posted on the cement to the front of the actual handicapped parking space. Referencing a site plan titled; Mashpee Commons Building 3, Proposed Improvements Greene Street, Mashpee, Massachusetts, developed by Horsley Witten Group, Inc., 90 Route 6A, Sandwich, MA, prepared for Mashpee Commons Limited Partnership, PO Box 1530 Mashpee, MA. Revisions: 7/31/14 Revise existing grades, 9/5/14 Clarity revisions, sprinkler location. Project number: 14026, Sheet 2 of 3, Sheet C-2.

Mr. Jodka, seconded, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Cotuit Solar: Request a Variance under §174-31 (Land Space Requirements) of the Zoning By-laws and M.G. L. Chapter 40A §10 for relief from the front, rear and side setback requirements of a residential structure located in a C2 Zone at 36 Savannas Path, (Map 62 Parcel 68B), Mashpee, MA. (Continued from August 27, 2014 Hearings).

Cotuit Solar: Request a Special Permit under §174-24, §174-25 D (1) and §174-41F for redevelopment of a residential structure for office use along with construction of a solar warehouse facility to store supplies, and meet the adequate parking requirements for the business located in a C2 Zone at 36 Savannas Path, (Map 62 Parcel 68B), Mashpee, MA. (Continued from August 27, 2014 Hearings).

Mr. Conrad Geyser, representing Cotuit Solar, returned in front of the Board. At the prior meeting, Chairman Furbush made a few suggestions regarding the building design by making it more narrow, and also scheduled a site visit with the Building Commissioner prior to returning to the Board. Mr. Geyser stated he updated the plan moving the pole barn by 10 feet, and moved the proposed gate so the parking is accessible from Savannas Path.

Mr. Blaisdell said he will not be able to comment on the plan until after his meeting with Conservation. Mr. Geyser stated he will be going back to Conservation on October 9th, and it's to discuss the wetland area was thought to be a river front and it is not. They removed the river front from the plans.

Mr. Mendoza suggested Mr. Geyser discuss the updated plan and any changes to the site with the Planning Board to make sure a formal meeting/hearing is not required. He will need to have something in writing stating they are satisfied.

Mr. Blaisdell read a comment from Tom Fudala made at a Design Review Committee meeting dated, August 19, 2014; "Tom Fudala commented that the property is subject to a recorded Road Covenant which states no building permits may be issued, or the lot sold, until the Covenant is released by the Planning Board. The Board would release it once the road is built, or if the applicant provided a cash performance guarantee in the amount of 150% of the cost of the remaining work needed to complete the road."

Mr. Geyser stated that the road covenant was recorded. Mr. Bonvie asked if the road was built and since it was not, he suggested he submit a bond because there is no frontage and therefore not a legal road. Mr. Geyser stated he has not finalized the covenant with the Planning Board as of this date.

Mr. Mendoza cannot issue a permit until he knows what is approved by the Planning Board.

Mr. Blaisdell stated he also cannot make any decisions because there are many open items that need to be addressed such as; Conservation, Planning regarding the road, a bond, and also Charlie Rowley providing an estimate of any work that he need to perform which requires a bond for him.

Mr. Blaisdell suggested to Mr. Geyser he request a continuance because the Board must vote and render a decision prior to November 1, 2014. There are only two hearings left within this time frame. Mr. Goldstein also reiterated the same.

Mr. Geyser agreed to continue and will get clarification regarding the updated changes to the plan. Mr. Geyser thought his covenant was approved.

Mr. Bonvie stated the covenant said that you cannot pull building permits until you build or bond the completion of the road. Until that covenant is released you do not have legal frontage. Until a bond is issued, you cannot have permission to build the road without definitive dimensions.

Mr. Mendoza reviewed the list of items Mr. Geyser needs to address prior to returning to the Board. They are;

- Meet with Conservation on October 9, 2014. (Keep in mind you agreed to return on October 8, 2014).
- Meet with Planning Board to discuss the road and supply a bond.
- All Boards need to be addressed prior to returning to the ZBA.

*The ZBA will need to make a decision before the deadline of November 1, 2014. There are only two meetings before the deadline.

- The Building Commissioner cannot issue building permits until the Zoning Board makes their decision.

*If these items are not addressed by the next hearing or the October 22nd hearing, the Board will need to act or accept a withdrawal.

John Bartlett, an abutter that resides at 28 Sampsons Mill Road approached the Board requesting the Board condition some items regarding the light pollution, which he stated was addressed by the applicant of the proposed downward lighting design. Noise pollution was suggested for hours of operation, and no weekend hours. He wanted clarification that this is documented in the special permit and is enforceable.

Mr. Blaisdell and Mr. Bonvie suggested Mr. Bartlett he return to the next hearing and address the same items. Mr. Bartlett will address the vegetation issues on the plan with Conservation at their meeting. Mr. Bartlett said the biggest issue is the traffic concerns regarding commercial vehicles access through Route 28.

Jim Wills, Sampsons Mill Road. Is concerned about construction vehicle access on Sampsons Mill Road and is a major concern in the neighborhood. He considers this an issue and would like it stated in the record that construction vehicles access only through Route 28, and would like the Board to condition this as part of the special permit if issued. Mr. Blaisdell suggested a letter be submitted to the Board so it can be referenced.

Mr. Bonvie stated that the Board listens very closely to all abutter comments.

Mr. Bonvie made a motion that the Board approve an extension requested by the applicant in writing until October 8, 2014 for a variance and special permit as listed in their petition request.

Geoffrey P. Sprague: Requests a Special Permit under Section 174-45.4 of the Zoning By-laws to allow for an accessory apartment in basement of dwelling located in an R-5 Zoning District at 151 Pimlico Pond Road, (Map 2 Parcel 134), Mashpee, MA

Geoffrey Sprague, represented himself for the petition. He stated he has an unfinished basement and would like to turn half the area into an apartment. He would like to know the egress requirement.

Mr. Blaisdell read the Accessory Apartment Bylaw verbatim stating the property owner shall submit to the Building Inspector sufficient evidence to demonstrate occupancy of the principal dwelling unit.

Mr. Jodka read the Board of Health comments into the record; "Board of Health septic has been upgraded for proposed use."

Mr. Goldstein confirmed the square footage does not exceed 876. He also mentioned the Board of Health would like the opening to the media room be 6 feet.

Mr. Bonvie stated the applicant must submit an annual renewal form as proof of residency or the apartment permit becomes null and void.

Mr. Mendoza asked the Board if a separate electrical meter and address has ever been conditioned for this type of application. Mr. Blaisdell stated it is not in the bylaw, so it is not enforced.

Mr. Bonvie made a motion to approve Geoffrey P. Sprague's request for a Special Permit under Section 174-45.4 of the Zoning By-laws to allow for an accessory apartment in basement of dwelling located in an R-5 Zoning District at 151 Pimlico Pond Road, (Map 2 Parcel 134), Mashpee, MA. This motion is based on a plan titled; Basement Apartment Plan, totaling 588 square feet, scale = 1/4" = 1', stamped by Town of Mashpee Fire & Rescue Department, also a Mortgage Inspection Plan for Geoffrey P and Sarah J Sprague, 151 & 161 Pimlico Pond Road, Mashpee, MA, and a calculation plan, showing a first floor and second floor. This motion is agreed by the Board that no separate electric meter for this basement apartment and no separate address.

Mr. Jodka seconded, yes, Mr. Blaisdell, yes, Mr. Bonvie, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes.

OTHER BUSINESS:

Approve August 27, 2014 Meeting Minutes

Mr. Jodka made a motion to approve August 27, 2014 Meeting Minutes, Mr. Blaisdell, seconded, yes, Mr. Bonvie, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Mr. Bonvie made a motion to adjourn, yes, Mr. Blaisdell, seconded, yes, Mr. Jodka, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals